IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15009 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BECHARBHAI KEVALBHAI MARVADI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15009 of 2004

MR JV MEHTA for Petitioner No. 1-44

NOTICE SERVED BY DS for Respondent No. 1,3

MR PRASHANT G DESAI for Respondent No. 2

MR PJ VYAS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/01/2005

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, learned AGP waives service of Rule on behalf of respondents No. 1, Shri PG Desai, learned advocate on behalf of respondent No.2 and Shri PJ Vyas, learned advocate waives service on behalf

of respondent No.4. Shri JV Mehta, learned advocate seeks permission to delete respondent No.3.

2. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, order or direction directing the respondent No.2 to provide alternative suitable residential accommodation to the petitioners before taking possession from them and before implementing Town Planning Scheme No.21 and removing the petitioners from Final Plot No. 486 situated at Marvadi Vas, Bhudarpura Village, Ambawadi, Ahmedabad-15. It is not in dispute that Town Planning Scheme No.21 has become final and Final Plot No. 486 is allotted to the respondent No.4. It is also not in dispute that as per the scheme and policy of the respondent Corporation if a person is affected due to implementation of Town Planning Scheme and if he is in lawful occupation of the land in question prior to 1976 he is entitled to an alternative accommodation. Shri Mrugan Purohit, learned advocate appearing on behalf of Mr. PG Desai, learned advocate for the respondent Corporation has submitted that as such no particulars are produced by the petitioners before the Corporation to show that the petitioners, except 12 of them, are in lawful occupation of the land in question prior to 1976.

3. Shri Mehta, learned advocate appearing for the petitioners has submitted that each petitioner will be producing necessary documentary evidence before the Ahmedabad Municipal Corporation within the period of two weeks from today to show and prove that they are in lawful possession of the land in question prior to 1976 and that they are entitled to the benefits of the policy of the Corporation with regard to alternative accommodation. On receiving such particulars, the respondent Corporation is directed to consider those particulars and come to a specific conclusion whether any of the petitioner is entitled to benefit of the policy with regard to alternative accommodation or not within the period of four weeks thereafter. On having found that any of the petitioners is entitled to be given alternative accommodation as per the policy of the Corporation, the Corporation is directed to give alternative accommodation to those persons as per their own policy as early as possible. On giving possession of alternative accommodation to those persons who are entitled to the benefit of the policy of the Corporation and to those persons who are found to be in lawful possession of the land in question prior to 1976, those petitioners are directed to hand over vacant and peaceful

possession of the land, which is occupied by them and which is forming part of Town Planning Scheme which has become final, to the Corporation immediately, and, on getting possession of the land in question from those petitioners, the respondent Corporation is directed to hand over possession of the land which is allotted to the respondent No.4 immediately. It will be open for the petitioners to request for personal hearing at the time of scrutiny and request that one person to be nominated by the petitioners may appear before the respondent Corporation, which may be considered by the Corporation sympathetically. It is, however, made clear that if on scrutiny it is found that some petitioners are not in lawful possession of the land prior to 1976 and they are not entitled to the benefit of the policy of the Corporation with regard to alternative accommodation, it will be open for the respondent Corporation to take appropriate action in accordance with law for removal of their possession immediately. Till the aforesaid proceedings are completed, the petitioners are directed not to part with possession of the portion which is occupied by them and/or not to create any right in favour of any other person.

4. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.